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Supreme Court of the United States

No. 590.

TERM A. D. 1944.

IN THE MATTER

OF

ASSOCIATED GAS AND ELECTRIC COMPANY,
Debtor,

In Proceedings for the Reorganization of a Corporation Pursuant to Chapter X of the Bankruptcy Act.

IRVING ELIAS, MAX MENACHEN and MICHAEL MOISE, constituting the Protective Committee for the Holders of Convertible Obligations, Due 2002, etc., *et al.*,
Petitioners and Appellants Below,

AGAINST

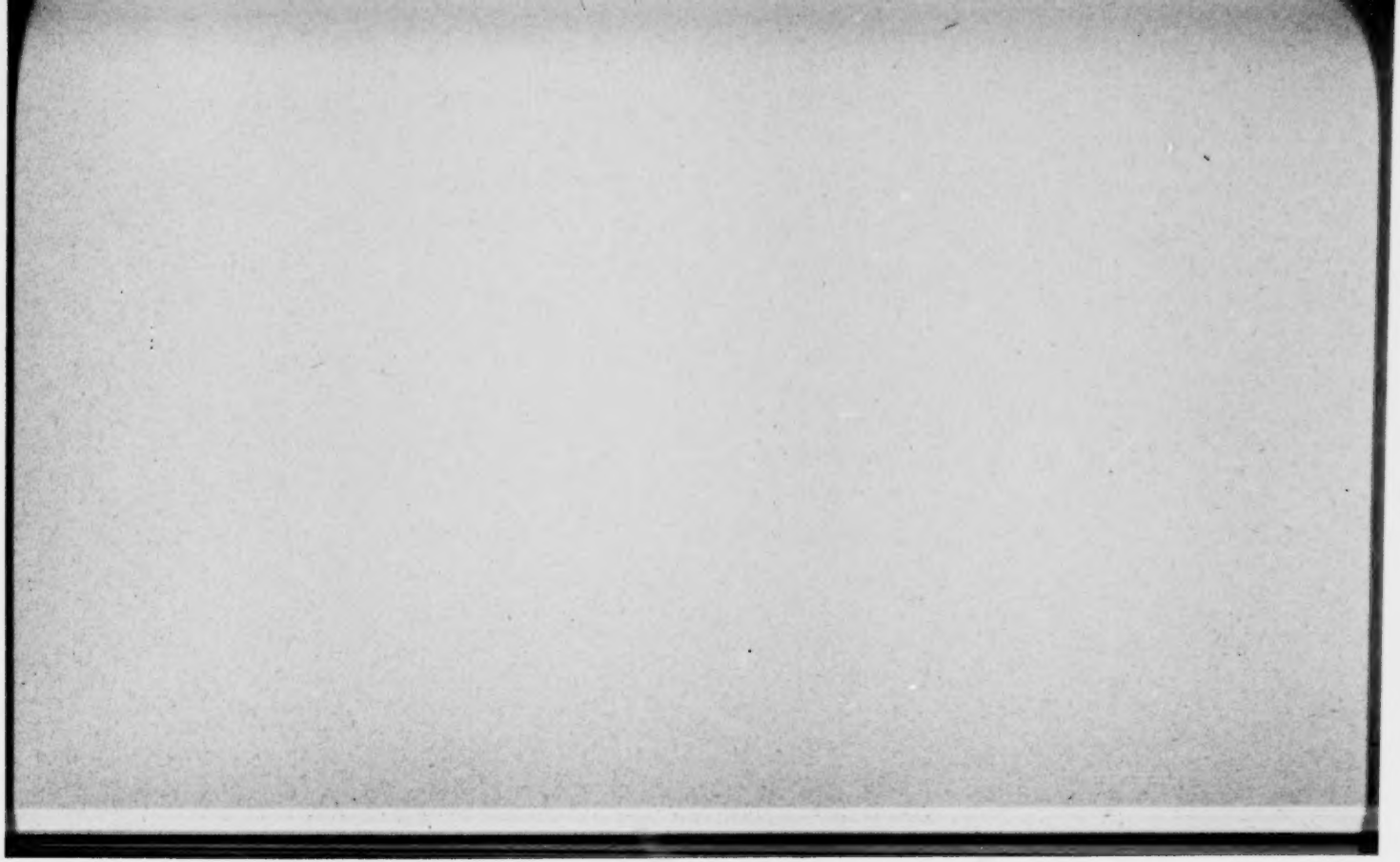
STANLEY CLARKE, Trustee of ASSOCIATED GAS AND ELECTRIC COMPANY, Debtor, *et al.*,
Respondents and Appellees Below.

Reply Brief in Support of Petition for Writ of Certiorari.

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On page 4 of respondents' brief it is stated

> "It is not clear just whom petitioners represent and what are the facts as to the claimants they

> represent. * * * Petitioners are not themselves claimants, they are committees for classes of security holders."

The "Elias" committee for holders of convertible obligations due 2002, petitioners in No. 590 have been authorized by the Securities and Exchange Commission to solicit and represent the Holders of Convertible Obligations Due 2002, All Series (exclusive of those holders who acquired same by direct exchange for original Convertible Debenture Certificates or Convertible Debenture Obligations, Series F) of Associated Gas and Electric Company.

All of the members of the "Elias" Committee personally own Convertible Obligations Due 2002 of Associated Gas and Electric Company which were purchased in 1937. The records filed in the Securities and Exchange Commission disclose that the "Elias" Committee represented in its inception holders of Convertible Obligations aggregating $643,000 principle amount.

The "Elias" Committee has appeared and actively participated in all court proceedings involving these securities.

No objection has ever been raised to the status or standing of the "Elias" Committee in these proceedings. Nor have other representatives of these securities participated in these proceedings.

The "Elias" Committee represents the individual claimant, Lester Martin, whose claim is included in the Record on Appeal (8-29).

Formal intervention by a Protective Committee is not required under the present Bankruptcy Act.

In re Philadelphia and Reading Coal and Iron Co., 105 F. 2nd 358, 3rd Circuit, the Circuit Court of Appeals said:

> "The fact nevertheless remains that the Congress has provided that all creditors and stockholders

and their attorneys, agents, and committees on their behalf have the right to be heard on all questions and to be compensated for services rendered in a reorganization proceeding. The latter right which is given by Sections 242 and 243 of Chapter X, 11 U. S. C. A. Sec. 643, 643 is not conditioned upon formal intervention."

It has been repeatedly held that bondholders can be heard on appeal although they have not formally intervened.

In re Day & Meyer, Murray & Young Inc., 2nd Circuit, 93 F. 2nd 657;
In re Barclay Park Corporation, 2nd Circuit, 90 F. 2nd 595.

Replying to Point 5 and Point 1 of Respondents' Brief.

Petitioners in Docket No. 590 (COABs) raised the contention that the Circuit Court of Appeals erred and exceeded its jurisdiction by passing upon issues *not* presented by the record on appeal. Particularly where the issues involved were assumed by the District Court in favor of appellants and hence were not presented in the record on appeal.

These issues involved the question of whether AGECO's conversion privileges with respect to the CDCs were valid and legal and the further question (assuming AGECO's conversion privileges were valid) of whether the necessary conditions precedent existed and the options to convert were properly exercised. Petitioners indicated that the Circuit Court of Appeals in passing upon these issues, assumed in appellants' favor by the District Court, seriously prejudiced the substantive rights of the petitioners who contended that the subordination agreement was void

as a matter of contract law since it was obtained through fraud and without any additional consideration.

Respondents in their answering brief seek to create the impression that the petitioners in No. 590 (COABs) raised these issues on their merits before the Circuit Court of Appeals and hence are in no position to complain that the Court considered their arguments and ruled upon them.

The respondents state:

> "It was the fact of the presentation and argument of these issues to the Circuit Court of Appeals by petitioners that induced that Court to pass upon the issues."

This statement is entirely untrue and misleading insofar as the petitioners in No. 590 (COABs) are concerned.

The petitioners in No. 590 representing only the holders of COABs have *never* presented or argued these issues before the Circuit Court of Appeals. They have consistently taken the position and contended that these issues were necessarily assumed in their favor by the District Court for the purpose of ruling upon only certain limited issues and any decision of the Circuit Court of Appeals must be predicated upon these assumptions in appellants' favor.

It is true that the petitioners in Docket No. 591 (Scrip) erroneously presented and argued these issues before the Circuit Court of Appeals but this presentation cannot be attributed to the other petitioners-appellants (COABs) who are entirely independent, and represented by separate counsel.

The respondents by answering both petitioners jointly in one brief have implied that both petitioners, the "Elias" and the "Jones" Committees raised these issues before the Circuit Court of Appeals which is misleading.

The contention made by respondents that the petitioners herein designated these issues as one of the points on which appellants intend to rely (938) is likewise untrue.

Paragraph numbered "11" which is quoted does not in any wise raise the issue that AGECO's conversion privileges with respect to the CDCs were invalid or illegal or (assuming AGECO's conversion privileges were valid) that the necessary conditions precedent existed and the options to convert were properly exercised. The point indicated assumes these issues in appellants' favor (as the District Court did) and states that the COAB certificates received in exchange for CDCs should be restored to their original position as CDC certificates and as such participate in the reorganization on a parity with the general unsubordinated creditors of AGECO. This point is fully elaborated in Point B of petitioners' brief (No. 590) in support of its petition for a writ of certiorari and by no means raises the issues contended.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reversing said decision.

Respectfully submitted,

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